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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 CLINTON HECK,

9 Plaintiff,

10 v.

11 BRUCE GAGE, et al.,

12 Defendants.

Case No. C11-5539BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

13  
14 This matter comes before the Court on the Report and Recommendation (“R&R”) of  
15 the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 15) and Plaintiff  
16 Clinton Heck’s (“Heck”) objections to the R&R (Dkt. 16).

17 On August 1, 2011, Heck filed a civil rights complaint (Dkt. 5) and a motion for  
18 temporary restraining order and preliminary injunction (Dkt. 6). In the motion, Heck  
19 requests that the Court order prison officials to treat his Attention Deficit Hyperactive  
20 Disorder with a medication that is not on the normal formula for prescriptions at the prison.  
21 *Id.* On August 31, 2011, Judge Creatura issued the R&R recommending that the Court deny  
22 Heck’s motion because “it is improbable that [Heck] will prevail on the merits.” Dkt. 15.

23 In the R&R, Judge Creatura concluded that Heck failed to show that he met the test  
24 for deliberate indifference under the cruel and unusual punishment clause of the Eighth  
25 Amendment. *Id.* at 2-3. Specifically, Judge Creatura found that:

26 The disagreement [between prison officials and Heck] regarding a course of  
27 treatment for [Heck’s] alleged mental condition does not amount to deliberate

1 indifference. Further, [Heck] fails to show he will suffer irreparable injury if  
2 injunctive relief is denied.


3 *Id.* at 3.

4 Heck objects to the R&R on the basis that he has established questions of fact  
5 regarding his claim under the Eighth Amendment (Dkt. 16 at 2-4), his claim under the  
6 American with Disabilities Act, 42 U.S.C.A. § 12101, *et seq.* (Dkt. 16 at 4-5), and his claim  
7 for accommodation of a fundamental right (*id.* at 6-10). Heck's burden for preliminary  
8 relief, however, is to show a probability of success on the merits. *Alliance for the Wild*  
9 *Rockies v. Cottrell*, 632 F.3d 1127, 1137–38 (9th Cir. 2011). Heck has failed to meet this  
10 burden.

11 Therefore, the Court having considered the R&R, Heck's objections, and the  
12 remaining record, does hereby find and order as follows:

- 13 (1) The R&R is **ADOPTED**; and  
14 (2) Heck's motion for preliminary relief (Dkt. 6) is **DENIED**.

15 DATED this 6th day of October, 2011

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17 BENJAMIN H. SETTLE  
18 United States District Judge  
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